IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

MACA.No. 777 of 2007()

OPMV.1627/1997 of MOTOR ACCIDENTS CLAIMS TRIBUNAL, MAVELIKKARA .
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APPELLANTS
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1. **V.VISWAMURTHY, DRIVER,**
   RAILWAY ASST.EXECUTIVE ENGINEERS OFFICE,
   KOLLAM.

2. **THE SENIOR DIVISIONAL ENGINEER,**
   SOUTHERN RAILWAY, TRIVANDRUM.

3. **UNION OF INDIA REP.BY**
   THE GENERAL MANAGER,
   SOUTHERN RAILWAY, CHENNAI.

BY ADV. SRI.M.C.CHERIAN,SR.SC.,RAILWAYS

RESPONDENTS:
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1. **REMA,**
   W/O LATE GOPALAKRISHNAN, THALAVELIL PADEETTATHIL HOUSE, PATHIYOOR WEST, KEERIKKAD P.O., KAYAMKULAM, ALAPPUZHA DISTRICT.

2. **RAJAN,**
   S/O LATE GOPALAKRISHNAN,
   THALAVELIL PADEETTATHIL HOUSE,
   PATHIYOOR WEST, KEERKKAD P.O.,
   KAYAMKULAM, ALAPPUZHA DISTRICT.

3. GOPAKUMAR,
S/O LATE GOPALAKRISHNAN,
THALAVELIL PADEETTATHIL HOUSE, PATHIYOOR WEST,
KEERIKKAD P.O., KAYAMKULAM, ALAPPUZHA DISTRICT.

4. KARTHIYAYANI,
M/O LATE GOPALAKRISHNAN,
THALAVELIL PADEETTATHIL HOUSE, PATHIYOOR WEST,
KEERIKKAD P.O., KAYAMKULAM, ALAPPUZHA DISTRICT.

BY ADV. SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SMT.KAVITHA GANGADHARAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 17/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B. KOSHY and T.R.RAMACHANDRAN NAIR, JJ.

M.A.C.A. No. 777 of 2007

Dated this the 17th day of July, 2007

Judgment

Koshy, J.

This appeal is filed by the driver and owner of a jeep who were directed to deposit the amount of compensation in a motor accident case. Gopalakrishnan, a 38 year old toddy tapper, while riding a bicycle along the national highway at 6.45 p.m. on 27.11.1996, was hit by a jeep bearing registration No. KBT 5261 driven by the first appellant and owned by the second respondent. Third respondent was the ultimate owner. Claimant sustained very serious injuries and died on the same day. His dependents filed an application for compensation alleging that driver of the vehicle, first respondent (first appellant herein) was negligent. First appellant as R1 did not file a written statement. Of course, third appellant as R3 filed a written statement. This appeal is filed mainly contending that finding of negligence by the tribunal on the part of the jeep driver, first appellant, is not correct. The tribunal found as follows:

> "6. Ext.A1 is the copy of FIR in Crime No.257/96 of Kareelakulangara Police Station. Ext.A2 is the scene mahazar. The tarred portion of the road was having a width of 6.70 mts. The accident took place 80 c.ms. to the east from the western tar end. Ext.A3 is the vehicle mahazar relating to the jeep. As per Ext.A4 Vehicle Inspection Report, there was no mechanical defect in the jeep. 1st respondent is arrayed as the accused in Ext.A6 charge sheet. A reading of the scene of occurrence would clearly go to show that the jeep crossed the mid-line and went over to the western tar end of the road and hit the vehicle. No explanation is offered from the side of the respondents as to why the jeep was taken to the wrong side of the road. Negligence on the part of the 1st respondent in driving the jeep is convincingly established from the side of the petitioners. There is no evidence that the deceased had contributed for the accident."

PW2 is an eye witness. A suggestion was made to PW2, during cross-examination, that the accident occurred when Gopalakrishnan tried to cross the road. That suggestion was denied and PW2 very clearly stated that the accident occurred only because of the negligence of the driver of the vehicle. Driver of the vehicle, first appellant in

this case, apart from not filing written statement, did not go to the box and deny the allegations against him. No document was also filed by the appellants and no witnesses were examined by the appellants to contradict the evidence adduced on behalf of the claimants. Ext.A1 is the copy of F.I.R. and Ext.A2 is the scene mahazar. After investigation, police charge-sheeted the first appellant as can be seen from Ext.A6 charge sheet. Absolutely no material is produced to show that the poor deceased was negligent or he has also contributed to the accident. Even though it was claimed that the deceased was a toddy tapper earning more than Rs.3,000/- per month, tribunal has fixed Rs.2,400/- as the monthly income and one-third was deducted to arrive at the loss of dependency. Since no counter evidence was adduced and only just and reasonable compensation was granted, we are of the view no grounds are made out for interfering in the award. Appeal dismissed.

J.B.KOSHY
JUDGE

T.R.RAMACHANDRAN NAIR
JUDGE

vaa

J.B. KOSHY AND
T.R.RAMACHANDRAN NAIR, JJ.

M.A.C.A.NO.777/2007

JUDGMENT

Dated:17th July, 2007